

- c) electronically generating a determined price of the open end financial product in real time in response to the data;
- d) electronically outputting the determined price of the financial product; and,
- e) electronically executing the transaction of a purchase or sale of the financial product. --

#### **REMARKS**

By the above amendments, Claim 8 has been amended, Claims 1, 3-7 and 9-18 have been canceled, and Claims 19-51 have been added. Claim 2 was canceled previously. Accordingly, Claims 8 and 19-51 are pending. The above amendments do not add new matter.

Claims 1, 3-7 and 9-18 have been canceled without prejudice and in a good faith effort to expedite prosecution of claims having particular interest to the Applicants.

Claim 8 stands rejected under the judicially created doctrine of obviousness-type double patenting and under 35 U.S.C. 103(a) as being unpatentable over Gitter in view of Macro\*World and Official Notice taken by the Examiner. Attached is a terminal disclaimer to overcome the obviousness-type double patenting rejection. Applicants believe the rejection of Claim 8 under 35 U.S.C. 103(a) is improper because the prior art of record fails to teach or suggest all of the limitations of the Claim as originally submitted. However, in a good faith effort to pass Claim 8 to issue, Applicants have added additional limitations not taught or suggested by the prior art of record. For example, the prior art fails to teach or suggest determining in real time the price of the claimed financial product on the basis of a user-defined method of weighting the selected portfolio of securities. Accordingly, Applicants respectfully request that Claim 8 be passed to issue.

Likewise, independent Claims 19, 30, 41 and 51 are allowable over the prior art of record because, inter alia, there is no teaching or suggestion for determining in real time the price of the claimed financial product on the basis of a user-defined method of weighting securities. In addition, regarding Claims 19, 30 and 41, the prior art fails to teach or suggest creating an open ended financial product having a fixed number of outstanding shares over a predetermined period of time and comprising of securities that are changed from time to time.

Dependent Claims 20-29, 31-40, and 42-50 also are allowable over the prior art of record because they include the limitations of either independent Claim 19, 30 or 41. The prior art of record fails to teach or suggest: trading the outstanding shares of the claimed financial products on an exchange as set forth by dependent claims 20 and 31; listing the outstanding shares of the claimed financial products on an exchange as set forth by dependent claims 21, 32 and 42; correlating the price of the outstanding shares of the claimed financial products to the price of the underlying securities as set forth by dependent claims 22, 33 and 43; calculating overall positions of shareholders of claimed financial products as set forth by dependent claims 23, 34 and 44; calculating a net asset value of the claimed financial products as set forth by claims 24, 35 and 45; buying and selling shares of the claimed financial products as set forth by claims 25, 36 and 46; trading and tracking shares of the claimed financial product on an exchange as set forth by claims 26, 37 and 47; electronically trading shares of the financial product as set forth by dependent claims 27, 38 and 48; creating a derivative product related to the open ended financial product as set forth by claims 28, 39 and 49; and clearing trades of the open ended financial product as set forth by claims 29, 40 and 50.

In considering passing the Application to issue, Applicants request the Examiner consider the Declaration of Kenneth Kiron, dated February 3, 1998, and submitted in connection with the parent application for fully complying with the duty of disclosure. After receiving the Declaration during prosecution of the parent application, the Examiner required the insertion of the limitation "in real time" "to more clearly distinguish the claimed invention from the invention disclosed to others as evidenced by the Declaration by Applicant." See, Interview Summary Record, dated May 12, 1998, in parent application.

Applicants acknowledge receipt of Notice of Draftsperson's Patent Drawing Review, PTO-948. Applicants will submit corrected drawings upon an indication of allowable subject matter.

By the above amendments, five (5) independent claims and thirty-four total claims are pending. Applicants initially paid for four (4) independent claims and a total of twenty claims.

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Accordingly, Applicant encloses fees for the additional one (1) independent claim, fourteen (14) total claims, and an extension of three months to response to the Office Action of March 2, 1999. The Commissioner is hereby authorized to charge payment of any deficit in these fees to Deposit Account No. 23-0280. A duplicate copy of this sheet is enclosed for that purpose.

For the foregoing reasons, Applicants request reconsideration of the Application and allowance of all Claims. Should the Examiner have any concerns, the undersigned respectfully requests a telephonic or personal interview.

Respectfully submitted,

Dated:

9/2/99

By:



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**CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)**

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box Fee Amendment, Assistant Commissioner For Patents, Washington, D.C. 20231 on

Sept. 2, 1999  
Kathleen Rundquist

Kathleen Rundquist/80749.1